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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/824,716

04/15/2004

Glen J. Anderson

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GATEWAY, INC.

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EXAMINER

LOFTUS, ANN E

ART UNIT

PAPER NUMBER

3692

MAIL DATE

DELIVERY MODE

03/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/824,716	Applicant(s) ANDERSON ET AL.	
	Examiner ANN LOFTUS	Art Unit 3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 Apr 04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of the Claims

1. This action is in response to an amendment filed on 11/16/07. Claims 1-16 are pending. A provisional was filed 12/18/03.

Response to Arguments

2. The applicant argues that Milsted does not disclose presenting a sample of an uncompleted version of the work product. This argument misinterprets the rejection. Milsted is relied upon for presenting a sample. Blumberg is relied upon for a vote on an uncompleted version of the work product - see col 1 paragraphs 14 and 15, "designing the product or service is according to a predetermined level of votes received for different criteria of the product" and "permitting a product with design criteria to subsequently be manufactured." Blumberg also teaches putting design criteria online. Milsted teaches an online sample in col 81 near line 47. Thus the combination teaches presenting a sample of an uncompleted version of the work product.

3. The Official Notices from the first action were not traversed, thus it stands as old and well-known to cancel an offer due to lack of response and to replace a sample that draws no attention.

4. The applicant argues that a product under Blumberg's invention would not be cancelled because broad participation in its design would ensure its marketability. This does not address the case of insufficient participation. The examiner believes that the

claim language at issue is “initiating no creation, based on a tabulation of votes received”. Blumberg teaches decreasing the quantity produced in response to votes.

Blumberg also teaches in page 4 paragraph 60 that each decision can be voted upon until there is a large enough number of buyers and/or investors. A person of ordinary skill in the art would interpret this to mean that in the case of insufficient response, nothing happens to the work product. As it is old and well-known to cancel an offer due to lack of response, it would have been within ordinary logic and reasoning to interpret Blumberg’s discussion of eliminating risk to mean that a project with insufficient investor interest would not be manufactured or created, thus eliminating risk of unsellable inventory. A method step of no creation will produce predictable results with a reasonable expectation of technical success.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-7, 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Application 20030088482 filed 12/17/02 by Blumberg in view of US Patent No 6363313 filed 11/30/98 by Milsted et al.

As to claims 1 and 16, Blumberg teaches a method for determining a level of interest in an uncompleted work product in the abstract. Blumberg teaches presenting

an uncompleted version of the work product (design criteria) during a time period in a location capable of being accessed from the network in paragraph 7 page 1.

Blumberg teaches receiving at least one vote from a node connected to the network, the vote associated with one of the proposed versions of the work product, and a content preference in paragraph 59 page 4, which also teaches initiating the completion of the uncompleted work product based on the tabulation of votes. Blumberg teaches content preference (design criteria) in paragraph 7 page 1.

Blumberg does not explicitly teach samples, although samples could be included in design criteria. Milsted teaches presenting a sample of a proposed version of the work product during a time period in a location capable of being accessed from the network in col 81 lines 45-50. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Blumberg to add presenting a sample of an uncompleted version of the work product during a time period in a location capable of being accessed from the network in order to give the buyer a taste of the goods and promote sales.

Claim 16 specifically states "producing a partial portion of an uncompleted work product as a sample." Milsted teaches producing and presenting a partial portion of a work product as a sample such as an audio clip in col 81 lines 45-50. Blumberg teaches producing and presenting design criteria of an uncompleted work product online for a vote. It would have been obvious to a person of ordinary skill at the time of the invention to modify Blumberg to add a partial portion of a work sample to supplement the design criteria in order to give the buyer a taste of the goods and promote sales. For example,

an audio clip of a single song may be available before the entire CD packaging is complete.

In paragraph 61 page 5, Blumberg teaches that the risk of insufficient investor interest is removed by the invention, but Blumberg does not explain why. Blumberg does not explicitly teach canceling or “no creation” for a product which draws few votes. Blumberg also teaches in page 4 paragraph 60 that each decision can be voted upon until there is a large enough number of buyers and/or investors. A person of ordinary skill in the art would interpret this to mean that in the case of insufficient response, nothing happens to the work product. It would have been obvious to a person of ordinary skill in the art at the time of the invention to interpret Blumberg to mean that a project with insufficient investor interest would not be manufactured or created, thus eliminating some risk.

As to claim 2, Blumberg teaches receiving a payment commitment from the node associated with the vote prior to the initiating the creation in paragraph 15 page 1.

As to claim 3, Blumberg teaches content preferences as above, but does not specifically teach payment for access. Milsted col 5 lines 45-50 teaches receiving payment for access from the node; and providing the access to the work product when payment has been received. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Blumberg to add receiving payment for access from the node; and providing the access to the one or more of the work product and the work associated with the content preference when payment has been received in order to enable online delivery.

As to claim 4, in page 2 paragraph 29, Blumberg teaches a website.

As to claim 5, Blumberg teaches in paragraph 21 page 2 receiving payment over the network.

As to claim 6, Blumberg in paragraph 17 page 1 teaches that the network includes the Internet. In page 2 paragraph 29, Blumberg teaches the location includes a website connected to the Internet, and Blumberg teaches in paragraph 21 page 2 the receiving payment includes receiving payment from the node over the Internet at the website.

As to claim 7, Blumberg teaches delivering one of the work product and the work associated with the content preference, when creation is completed in paragraph 64 page 5.

As to claim 13, Blumberg does not specifically teach receiving payment for access from the one or more nodes; and providing the access to the one or more of the one or more work products and one or more works associated with the one or more content preferences when payment has been received. Milsted col 5 lines 45-50 teaches receiving payment for access from the one or more nodes; and providing the access to the one or more of the one or more work products and one or more works associated with the one or more content preferences when payment has been received. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Blumberg to add receiving payment for access from the one or more nodes; and providing the access to the one or more of the one or more work

products and one or more works associated with the one or more content preferences when payment has been received in order to enable Internet delivery.

6. Claims 8, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blumberg in view of Milsted et al. and further in view of Official Notice.

As to claim 8, the Blumberg Milsted combination does not specifically teach presenting a new sample of a proposed version of a new work product during a new time period in the location capable of being accessed from the network if the vote is not received from the node during the time period. Official Notice is taken that it is old and well known to replace a sample that draws no attention. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the Blumberg Milsted combination to add presenting a new sample of a proposed version of a new work product during a new time period in the location capable of being accessed from the network if the vote is not received from the node during the time period in order to find a sample that draws more attention.

As to claim 9, the Blumberg Milsted combination does not specifically teach releasing the payment commitment after a deadline has expired if one of the work product and a work associated with the content preference is unavailable. Official Notice is taken that it is old and well known to release a payment commitment when the product or service is unavailable by a deadline. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the Blumberg Milsted

combination to add releasing the payment commitment after a deadline has expired if one of the work product and a work associated with the content preference is unavailable to avoid lawsuits and unhappy customers.

As to claim 10, the Blumberg Milsted combination does not specifically teach establishing a creation deadline associated with the initiation of creation of the one of the work product and a work associated with the content preference. Official Notice is taken that it is old and well-known to establish milestones and deadlines for a project including a creation deadline. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the Blumberg Milsted combination to add establishing a creation deadline associated with the initiation of creation of the one of the work product and a work associated with the content preference in order to reassure customers who will be anxious to receive the work.

7. Claims 11, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blumberg.

As to claim 11, Blumberg teaches in paragraph 7 page 1 receiving a proposed version of the one or more work products from one or more authors over the Internet during a time period in a location capable of being accessed from the Internet; Blumberg teaches multiple versions in paragraph 63 page 5. Blumberg teaches in paragraph 7 page 1 presenting the received one or more at least proposed versions at the location. Blumberg teaches in paragraph 59 page 4, receiving one or more votes from one or more nodes connected to the location, the one or more votes associated

with one or more of the one or more at least proposed version of the one or more work products and one or more content preferences; Blumberg in paragraph 17 page 1 teaches that the network includes the Internet. Blumberg teaches a threshold for initiating the creation of one or more of the one or more work products or one or more content preferences has been reached based on the received one or more votes in paragraph 60 page 4 (large enough number of buyers). In paragraph 59 page 4 Blumberg teaches causing to begun to be built. A person of ordinary skill in the art at the time of the invention would infer that causing an entity to begin building something would include notifying the entity, thus it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Blumberg to specifically include notifying one or more of the one or more authors to initiate creation.

As to claim 12, Blumberg teaches receiving one or more payment commitments from the one or more nodes associated with the vote prior to the notifying for the initiating the creation in page 1 paragraph 14.

As to claim 14, Blumberg teaches delivering one of the work product and the work associated with the content preference, when creation is completed in paragraph 64 page 5.

8. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blumberg in view of Official Notice.

As to claim 15, Blumberg does not specifically teach removing versions of work if votes are not received. Official Notice is taken that it is old and well-known to cancel an

offer due to lack of response. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Blumberg to add removing the one or more at least proposed versions of the one or more work products from one or more authors if the one or more votes are not received during the time period in order to focus resources on the versions that draw responses.

Conclusion

9. While portions of interest have been indicated, all references should be considered for the entirety of their teachings.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 3692

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Loftus whose telephone number is 571-272-7342.

The examiner can normally be reached on M-F 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on 571-272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AL

/Kambiz Abdi/
Supervisory Patent Examiner, Art
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